

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING DISTRICT REPORT (#FZD-15-02)**  
**SEPTEMBER 30, 2015**

A report to the Flathead County Planning Board and Board of Commissioners regarding a new zoning district to be called the “Evergreen Enterprise Overlay.” The proposed district would be located in the Evergreen, MT community and would overlay those areas currently zoned “B-2 General Business” and “B-3 Community Business” along the highways in the Evergreen commercial corridor with the “EEO – Evergreen Enterprise Overlay” zoning classification found in Section 3.50 of the *Flathead County Zoning Regulations*.

The Flathead County Planning Board will conduct a public hearing on the proposed zoning district on October 14, 2015 in the 2<sup>nd</sup> Floor Conference Room, 1035 1<sup>st</sup> Ave West, Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will also hold a public hearing on the proposed zoning district at a date and time yet to be determined.

Documents pertaining to the proposed zoning district are available for public inspection in the Flathead County Planning and Zoning Office, Earl Bennett Building, 1035 First Avenue West, in Kalispell. Prior to the Commissioner’s public hearing, documents pertaining to the zoning district will also be available for public inspection in the Flathead County Clerk and Records Office, 800 South Main Street, in Kalispell.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed land use is not located within the jurisdiction of a Land Use Advisory Committee.

**B. Planning Board**

On October 14, 2015 the Flathead County Planning Board held a public hearing on the proposed zoning text amendment. After a brief presentation by the staff of the Planning Board, no one spoke at the public hearing. A unanimous recommendation of approval was forwarded to the Flathead County Commissioners. For details of the Planning Board hearing, see attached addendum and minutes of the hearing.

**C. Commission**

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

**II. GENERAL INFORMATION**

**A. Applicant/Petitioner**

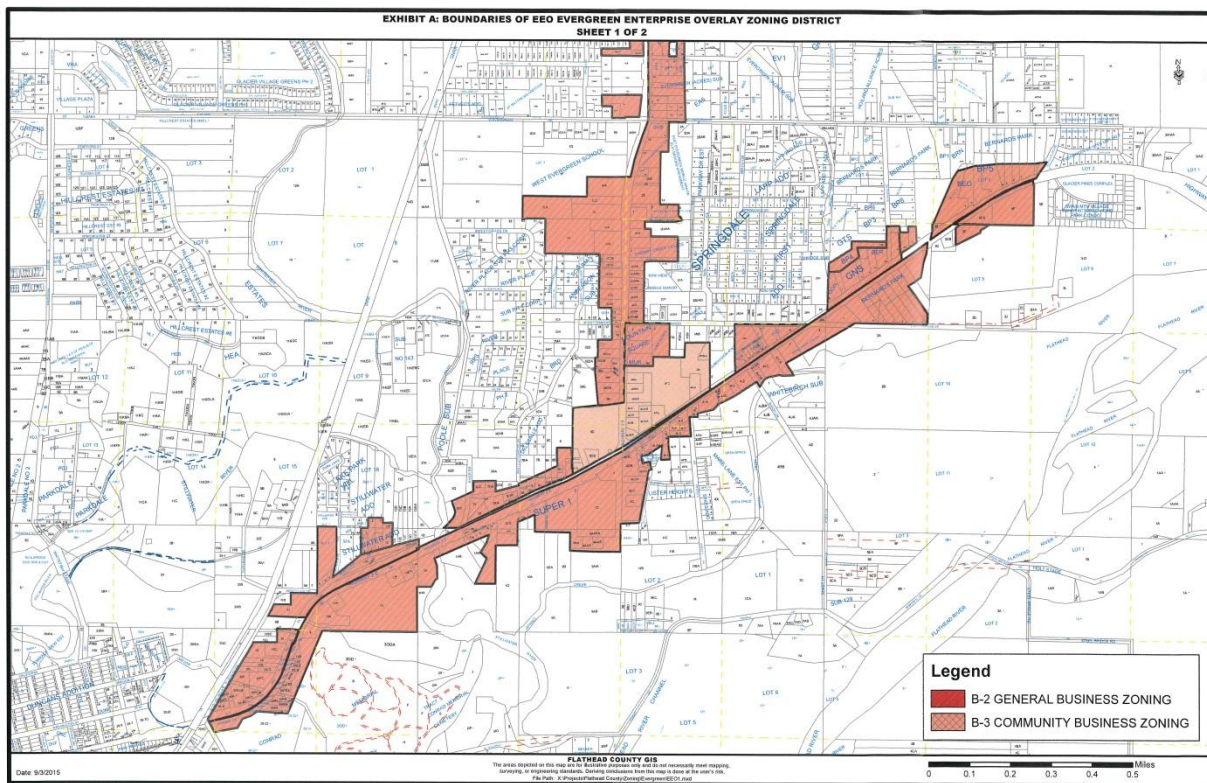
Flathead County Planning Board

(This application is based on a May 13, 2015 request by the Evergreen Chamber of Commerce for a publicly initiated project and subsequent approval by the Flathead County Planning Board and Board of Commissioners, per *Flathead County Planning and Zoning Office Administrative Fees and Fee Policies*, footnote #10.)

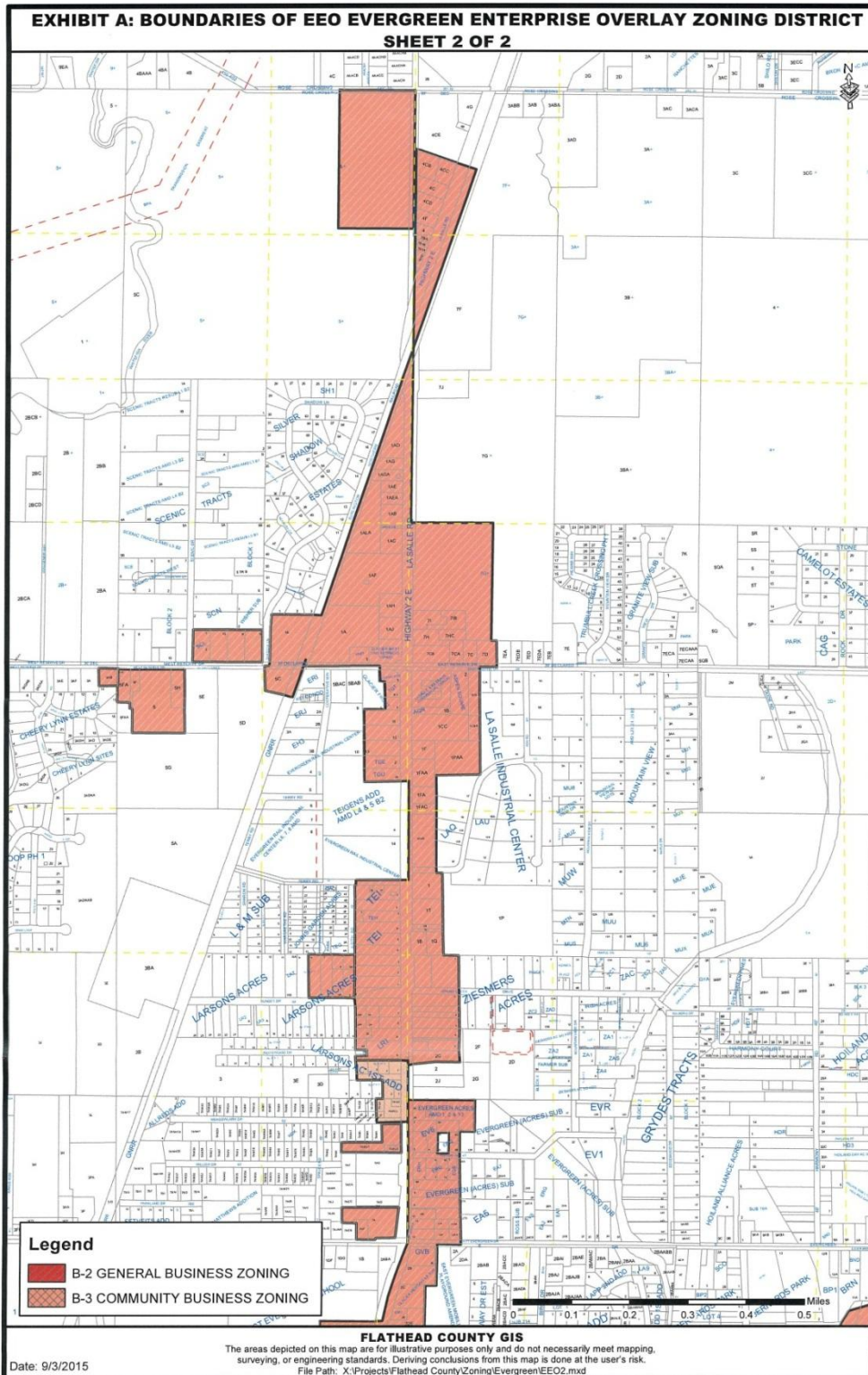
**B. Proposed Zoning District**

The publicly initiated application is a proposal from the Flathead County Planning Board for the creation of a new zoning district called “EEO – Evergreen Enterprise Overlay” (EEO). The area to be overlaid is currently zoned as part of the Evergreen and Willow Glen Zoning Districts. The proposed overlay zoning district would permanently overlay 523.54 acres that are currently zoned “B-2 General Business” (B-2) or “B-3 Community Business” (B-3) along the highway in the Evergreen commercial corridor with the “EEO – Evergreen Enterprise Overlay” zoning classification found in Section 3.50 of the *Flathead County Zoning Regulations*. A map of the boundary of the proposed EEO zoning district is shown as Figure 1 and Figure 2 below, and larger, 11” by 17” versions of these maps are included with this report for reference as “Exhibit A.”

**Figure 1: Boundary of proposed EEO zoning district, Sheet 1 of 2 (see Exhibit A attached to this report for larger version).**



**Figure 2: Boundary of proposed EEO zoning district, Sheet 2 of 2 (see Exhibit A attached to this report for larger version).**



## C. District Boundaries and General Character of Proposed Zoning

The boundary of the proposed EEO zoning district is all existing B-2 General Business or B-3 Community Business zoning in the Evergreen and Willow Glen Zoning Districts within 1500' of U.S. Highway 2 East beginning on the west side at Woodland Park Drive and extending east and north to the intersection with Rose Crossing, all existing B-2 General Business or B-3 Community Business zoning in the Evergreen and Willow Glen Zoning Districts within 1500' of MT Highway 35 beginning on the west at the intersection with U.S. Highway 2 East and extending east to the intersection with Helena Flats Road, and all existing B-2 General Business or B-3 Community Business zoning in the Evergreen Zoning District within 1500' of MT Highway 548 (West Reserve Drive) beginning on the east side at the intersection with U.S. Highway 2 East and extending west to a point just east of the intersection with Cheery Lynn Road.

The general character of the proposed EEO zoning district is a zoning district to diversify allowable businesses by adding "light assembly and manufacturing, fabrication and processing, repairing, packing, storage facilities, warehousing and distribution of products and equipment provided that such uses do not produce objectionable impacts beyond the lot lines and do not involve materials that are explosive, hazardous or toxic" to the existing zoning thereby encouraging infill development and broader utilization of existing services and infrastructure along the Evergreen highway commercial corridor.

#### **D. Existing Zoning**

The area is currently zoned under the Evergreen and Willow Glen Zoning Districts as either B-2 or B-3 zoning. Figures 1 and 2 above and Exhibit A attached to this report depict the boundaries of the existing B-2 or B-3 zoning to be overlaid as part of the new EEO zoning district.

#### **E. General Character of the Area**

The area in which the EEO zoning district is proposed to be overlaid is those areas already zoned B-2 and B-3 in the Evergreen commercial corridor. The Evergreen commercial corridor is an "auto-urban" environment predominantly characterized by direct access highway frontage, large areas of ample parking, existing signage and existing commercial structures historically filled with retail sales and service-oriented businesses. Areas of light industrial land uses such as wood product manufacturing, crane operations and light industrial parks are interspersed with the retail sales and service-oriented land uses in the existing B-2 and B-3 zoning. The majority of the corridor has varying densities of residential land uses behind the existing retail sales and service or light industrial land uses. Churches, a school, a fire station and public utilities also exist in the area of the Evergreen commercial corridor.

#### **F. Plan(s) Being Implemented**

The proposed zoning district would be a direct implementation of the *2016 Evergreen Enterprise Area* addendum to the *Kalispell City County Master Plan Year 2010*. For discussion on the proposal's consistency with the applicable plans, please see Section IV.B.i of this report.

#### **G. Public Services and Facilities**

Sewer:	Evergreen Water and Sewer District
Water:	Evergreen Water and Sewer District
Electricity:	Flathead Electric Cooperative
Telephone:	CenturyTel
Schools:	Kalispell, Evergreen & Helena Flats
Fire:	Evergreen
Police:	Flathead County Sheriff's Office

#### **H. Criteria Used for Evaluation of Proposed Zoning District**

The adoption of new zoning districts are processed in accordance with Section 2.08.060 of the *Flathead County Zoning Regulations*. The criteria for reviewing new zoning districts are found in 76-2-201 to 76-2-211, inclusive, M.C.A.

#### **I. Compliance With Public Notice Requirements**

Direct notification by mail was sent to all those landowners within the boundary of the proposed zoning district, as well as all those landowners within 150' of the boundary of the proposed zoning district on September 23, 2015. Legal notice of the Planning Board public hearing on this application was published in the September 27, 2015 edition of *The Daily Interlake*. Public notice of the Board of County Commissioners public hearing regarding the zoning text amendment will be published in the legal section of *The Daily Interlake* once a week for two weeks prior to the public hearing and be physically posted within the County according to statutory requirements found in Section 76-2-205 M.C.A. All methods of public notice will include information on the general character of the proposed zoning district, the boundaries of the proposed zoning district, the time and place of the public hearing and that information regarding the proposed zoning district is available for public inspection at the Flathead County Planning and Zoning Office and the Office of the Clerk and Recorder.

#### **J. Agency Referrals**

Referrals for comment on the proposed zoning district were sent to the following agencies on September 9, 2015:

- Bonneville Power Administration
- Montana Department of Natural Resources and Conservation
- Evergreen Water and Sewer District
- Evergreen Fire District
- Flathead City-County Health Department; Environmental Health Services
- Flathead County Road and Bridge Department
- Flathead County Sheriff
- Flathead County Solid Waste
- Flathead County Weeds and Parks Department
- City of Kalispell Planning Department
- Montana Fish Wildlife and Parks
- Montana Department of Transportation

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

As of the date of the completion of this staff report (September 30, 2015) no public comments have been received regarding the proposed zoning district. It is anticipated any member of the public wishing to provide comment on the proposed zoning district will do so at the Planning Board public hearing scheduled for October 14, 2015. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead County Road & Bridge Department
  - Comment: No comments at this time. (09/09/15 via email)
- Montana Department of Transportation
  - Comment: No comments regarding the proposal. (09/21/15 via email)
- Montana Fish, Wildlife & Parks
  - Comment: No comment with regard to this project. (09/22/15 letter)

### **IV. EVALUATION OF PROPOSED DISTRICT**

#### **A. Build Out Analysis**

Once a specific zoning designation is applied in a certain area certain land uses are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning district to the future of the community to allow for the best possible review.

The EEO zoning district will overlay the B-2 and B-3 zoned areas in Evergreen with one additional permitted use. The additional permitted use that will be allowed in areas zoned B-2 and B-3 is as follows:

1. *Light assembly and manufacturing, fabrication and processing, repairing, packing, storage facilities, warehousing and distribution of products and equipment provided that such uses do not produce objectionable impacts beyond the lot lines and do not involve materials that are explosive, hazardous or toxic. Examples of such uses would include but are not limited to the following:*
  - A. *Automobile, bus, truck, boat and equipment washing, detailing, repairing, service and storage.*



- B. *Manufacture of products such as clothing; furniture; fabricated wood, glass, plastic and metal products; leather and leather goods; medical, dental and optical products and equipment; and boat building.*
- C. *Processing and manufacturing of food such as baked goods, dairy products, alcoholic beverages and beverage manufacturing and bottling.*
- D. *Repair of equipment and consumer items such as appliances, clocks and watches, lawn and garden equipment, computers, televisions, shoes, and furniture.*
- E. *Storage and warehousing such as mini-storage, boat and vehicle storage.*

The only change created by the EEO zoning district is when it is used to overlay existing B-2 or B-3 zoning districts in the Evergreen commercial corridor. The text of the EEO zoning district states that “all bulk and dimensional requirements of the underlying B-2 or B-3 district(s)” are applicable. Therefore there are no changes to bulk and dimensional requirements regulating building heights, structural setbacks, fence heights, lot coverage etc. as a result of the proposed EEO zoning district.

The additional permitted uses allowed under the EEO zoning district have the potential to significantly impact public services and infrastructure. For example, a large baked goods manufacturing facility may introduce impacts to the Evergreen Water and Sewer District that would require review by the District and possible alterations and/or upgrades to the existing system. The same baked goods manufacturing facility may require changes to an existing approach permit for access to U.S. Highway 2 or MT Highway 35 based on changes in the type or volume of traffic created by the facility.

However, one of the primary purposes of the proposed new zoning district is to diversify and increase the allowable land uses in the Evergreen commercial corridor specifically because the public and private services and infrastructure exist to accommodate a diversity of land uses. Land uses that create additional impacts to public services and infrastructure at full build-out are desirable in an area of Flathead County where many services already exist and are operating. The *2016 Evergreen Enterprise Area* addendum to the *Kalispell City County Master Plan* details the existing characteristics and projected trends for the services and infrastructure available within the boundary of the proposed EEO zoning district and specifically calls for the proposed EEO zoning district.

Future land uses that develop within the proposed EEO zoning district will be restricted by the bulk and dimensional requirements of the underlying B-2 or B-3 zoning, review by the Evergreen Water and Sewer District and the Montana Department of Transportation, and language within the text of the EEO zoning district that prohibits “objectionable impacts that extend beyond the lot lines.” Additionally, future land uses that develop within the proposed EEO zoning district and that are within the 100-year floodplain will be restricted by the requirements of the *Flathead County Floodplain and Floodway Management Regulations*. Therefore, given the character of the area in which the proposed EEO zoning district will be applied and the availability of existing public and private services and infrastructure,



the maximum impacts of full build-out of new land uses allowed under the proposed EEO zoning district are adequately reviewed and appropriate mitigation of impacts will be required.

**B. Review of Proposed Zoning District (76-2-203 M.C.A.)**

**i. Whether the proposed zoning regulations are made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning district is a direct implementation of the *2016 Evergreen Enterprise Area (EEA)* addendum to the *Kalispell City County Master Plan Year 2010 (KCCMP)*. The KCCMP is an addendum to the *Flathead County Growth Policy*. The proposed EEO zoning district clearly and directly implements three of the four policies in the EEA addendum by:

- Overlaying, not replacing, existing B-2 and B-3 zoning districts thereby preserving conforming status of existing retail sales and service land uses;
- Adding allowable uses to an area historically zoned for retail sales and service to help encourage infill and re-development where critical public services and infrastructure already exist, and;
- Allowing Flathead County to regulate “objectionable impacts” that extend beyond lot lines due to the proximity of the existing B-2 and B-3 zoning district to residentially zoned areas of the community.

Part 6 of the Preface of the *Flathead County Growth Policy* was included in the 2012 update as a “Property Owner’s Bill of Rights.” Part 6 establishes what property owners in Flathead County can reasonably expect with regards to land use regulations and provides six requirements that “any regulatory requirements that apply to the use of private property using this Growth Policy or its’ amendments as its’ lawful basis must meet...”

The proposed EEO zoning district in the Evergreen commercial corridor is a “regulatory requirement” that is being applied to the use of private property. Therefore the six “requirements” below are quoted directly from Part 6 of the Preface of the *Flathead County Growth Policy* and are included herein as overall discussion of whether or not the proposed zoning regulations are made in accordance with the *Flathead County Growth Policy*.

*1. Must be carefully drafted to ensure the highest probability of meeting the constitutional tests of; a) ensuring substantive due process, b) providing procedural due process, c) ensuring equal protection, and d) avoid a “taking.”*

- The language of Section 3.50 is crafted specifically to increase the allowable land uses for private property along the Evergreen commercial corridor. The uses that are listed are permitted without additional review and will not be restricted so long as “such uses do not produce objectionable impacts beyond the lot lines and do not involve materials that are explosive, hazardous or toxic.” This restriction on the use of private property in a relatively high-

density area of rural Flathead County is a reasonable and compelling public need to protect the safety and welfare of adjoining landowners and the community and is therefore not a “taking” of private property rights. The restriction on impacts to neighbors applies equally to all properties on which the EEO zoning district is proposed.

2. *Must recognize that a key element to the custom and culture as well as the general welfare of Flathead County and its’ citizens and property owners, is a strong commitment to protecting individual property rights.*

- The majority of the B-2 and B-3 zoning that currently exists along the Evergreen commercial corridor was adopted after the installation of public sewer infrastructure when the land was being developed for retail sales and service. The EEO zoning district allows the diversification of land uses so that private property that is visible, has public services and is conveniently accessed may continue to be of value to both the community and landowners. The very purpose of the EEO zoning district demonstrates a strong commitment to protecting both individual property rights and the welfare of the community.

3. *Must be reasonably related to and must actually further the public health, safety or general welfare.*

- Vacant or underused commercial structures have the potential to negatively impact public safety and the general welfare of a community. Broken windows, weeds, cracked parking lots, faded and dilapidated signs and storefronts and graffiti quickly change the character of a community. Furthermore, vacant or underused commercial structures in areas of existing public infrastructure create an inefficient expenditure of public resources. For example, water and sewer lines are installed at great public expense and when those lines are not used and do not generate fees other users must offset the costs. When zoning only allows for retail sales and services but landowners and developers are unable to find tenants wanting to conduct those land uses, vacancy rates increase. Therefore, any effort to adopt regulations such as the EEO zoning district that may help to diversify and increase allowable land uses along the Evergreen commercial corridor is certainly reasonably related to and furthers public safety and the general welfare.

4. *Must not unreasonably discriminate between similarly situated land or uses.*

- The proposed EEO zoning district is being applied to all properties zoned B-2 or B-3 along the Evergreen commercial corridor. The proposed EEO zoning district increases and diversifies allowable

uses along the corridor in order to maximize utilization of existing public services and infrastructure. Rather than target individual properties or overlay additional permitted uses only on vacant structures, the entire corridor is being overlaid with the EEO zoning district. Applying the EEO zoning district equally to all properties currently zoned B-2 or B-3 ensures that similarly situated properties and property owners are treated the same with new options for allowable land uses.

5. *Must not be arbitrary or capricious either on its 'face or as applied to a particular property and should go no farther than is required to achieve its' legitimate objective.*
  - The purpose of the EEO zoning district is to increase the number and diversity of allowable land uses in an area of Flathead County with all necessary public services and infrastructure. The EEO zoning district only restricts new land uses if those land uses produce objectionable impacts that extend beyond lot lines or have hazardous materials. The legitimate purpose of this one restriction is to mitigate impacts to residential land uses adjacent to much of the corridor. This restriction on the additional allowable uses is not arbitrary because the potential for some light assembly and manufacturing land uses to impact adjacent residential land uses is obvious. However, the restriction on the additional allowable uses is the minimum needed to achieve the legitimate objective of encouraging and incorporating infill development and the re-purposing of existing commercial structures for the benefit of the community.
6. *Must not have the effect of excluding racial, minority, or economic groups from the jurisdiction and must guarantee representation for all property owners.*
  - The proposed EEO zoning district applies equally to all properties zoned B-2 or B-3 in the Evergreen commercial corridor. The benefits of additional allowable uses will apply to all landowners regardless of race or affiliation with a minority group. Landowners that are already zoned I-1 or I-1H are not included in the proposed EEO zoning district, but the additional allowable uses in the EEO zoning district are found within and adapted directly from the I-1 and I-1H zones. All property owners have been notified directly by mail of the proposed zoning district and are encouraged to attend public hearings and be heard by both the appointed members of the Flathead County Planning Board and the elected Flathead County Commissioners.

**Finding #1:** The proposed Evergreen Enterprise Overlay zoning district is made in accordance with the *Flathead County Growth Policy* because it is a direct

implementation of three of the four policies contained in the *2016 Evergreen Enterprise Area* document that has been reviewed and adopted as an addendum to the *Kalispell City County Master Plan Year 2010* and the *Kalispell City County Master Plan Year 2010* is an addendum to the *Flathead County Growth Policy*.

**Finding #2:** The proposed Evergreen Enterprise Overlay zoning district is made in accordance with the “Property Owner’s Bill of Rights” in the Flathead County Growth Policy because it meets all of the six requirements set forth in the Preface for any regulations that apply to the use of private property that use the Growth Policy as a basis.

**ii. Whether the proposed zoning regulations are designed to:**

**a. Secure safety from fire and other dangers;**

One of the primary reasons for the proposed zoning district is to increase allowable uses in an area of Flathead County that is currently developed and served with public services and infrastructure, thereby encouraging infill development. The area of Evergreen, MT in which the EEO zoning district is proposed is served by the Evergreen Fire District. Response times by the fire district would be very fast because a fully staffed fire station (Station 81) exists at 2236 Highway 2 East. This fire station is located almost perfectly in the geographic middle of the proposed EEO zoning district. Additionally, the EEO zoning district is proposed in an area served by existing public water infrastructure making water available for fighting fires. Fire hydrants are available within most of the proposed EEO zoning district and are typically located every 500 feet. The diversification of allowable uses and encouragement of infill development in an area served by a relatively new and fully staffed fire station and fire hydrants is an excellent way to help secure safety from fire. An agency referral was emailed to the Evergreen Fire District but as of the date of completion of this staff report no comments have been received.

Encouraging infill development within the EEO zoning district also helps secure safety from other dangers because the area is routinely patrolled by a Flathead County Sheriff’s Office deputy. Of the 4-5 deputies patrolling Flathead County at a given time, one is typically assigned to the Kalispell/Evergreen area. Additionally, increasing allowable uses for existing structures along a highway commercial corridor through adoption of an overlay zoning district may serve to reduce the likelihood of vacant and underutilized structures creating dangers for the community.

Flooding is a potential danger in portions of the EEO zoning district, but future commercial development in the 100-year floodplain must comply with structural floodproofing requirements found in the Flathead County Floodplain and Floodway Management Regulations.

**Finding #3:** The proposed EEO zoning district is designed to help secure safety from fire and other dangers because it will encourage infill and redevelopment in an area of Flathead County that is fully served by existing public safety services and infrastructure, it exists in an area of the county routinely patrolled by the Flathead County Sheriff's Office, contains portions of the 100-year floodplain that are subject to floodplain regulations that exist to prevent and mitigate danger to the community from flood risk, and the EEO zoning district will help to reduce the potential for vacant and underutilized commercial structures that can create dangers in a community.

**b. Promote public health, public safety, and general welfare;**

The proposed EEO zoning district will overlay existing B-2 and B-3 zoning districts and provide for more allowable uses to encourage infill, redevelopment and the re-purposing of existing commercial structures along the Evergreen highway commercial corridor. The proposed EEO zoning district includes language in the text of the zoning district that provides a "safety valve" to protect adjoining landowners from objectionable impacts that extend beyond lot lines. Encouraging and allowing the diversification and expansion of land uses while maintaining the conforming status of the existing retail land uses has multiple benefits to public safety and the general welfare of the Evergreen community.

Many of the benefits of encouraging infill, redevelopment and the re-purposing of existing commercial structures along the Evergreen highway commercial corridor are outlined in the EEA addendum to the KCCMP, of which the proposed EEO zoning district is a direct implementation. For example, any measures to amend regulations to allow the use of existing structures for multiple purposes (so long as objectionable impacts do not extend beyond lot lines) will help prevent vacancies and dilapidated structures from creating safety hazards. The EEO zoning district will help keep existing commercial structures desirable for light assembly, manufacturing, packing storing and other uses listed in the text of the EEO zoning district and these uses will then pay taxes and maintain jobs that provide a significant benefit to the general welfare of the community. In 2014, the landowners within the boundary of the EEO zoning district (those areas zoned B-2 and B-3 in the Evergreen commercial corridor) paid nearly two million dollars in taxes that benefit the community.<sup>1</sup> Regulatory measures to preserve and even add to the taxable value of land and improvements in the Evergreen commercial corridor clearly promote the general welfare of the community.

**Finding #4:** The EEO zoning district is specifically designed to improve public safety and the general welfare of the community by helping to prevent vacant and dilapidated commercial structures, diversifying permitted land uses and encouraging infill development and by filling formerly retail sales and

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<sup>1</sup> 2016 Evergreen Enterprise Area addendum document, Section IV.3, page 6.

service oriented buildings with other land uses that pay taxes and maintain jobs in the community.

**c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

All of the “public requirements” listed in this criterion for consideration of zoning are already available and more than adequate within the proposed EEO zoning district. The proposed EEO zoning district is served by U.S. Highway 2 and Montana Highway 35, both of which are carefully monitored and maintained by the Montana Department of Transportation. Traffic volumes in the proposed EEO zoning district are some of the highest in Flathead County, further justifying the diversification of allowable uses to take advantage of access to and visibility of existing commercial structures. The proposed EEO zoning district is also in relatively close proximity to rail and air transportation.

Public water and sewer services are available to properties within the proposed EEO zoning district. Those properties within the proposed EEO zoning district that are not currently served by public water and/or sewer services or are just outside the Evergreen Water and Sewer District boundary may request annexation and/or connection. Other public requirements that may benefit the type of land uses permitted by the proposed EEO zoning district such as law enforcement services, mail services, planning and zoning services, and solid waste disposal services are all available and adequate within the proposed EEO zoning district.

Although schools, parks, library facilities and services for the aging are within close proximity to the proposed EEO zoning district, they are not public facilities or services typically required for the type of land use permitted within the proposed zoning district.

**Finding #5:** The proposed EEO zoning district will facilitate the adequate provision of many public requirements because developed transportation services and facilities and public water and sewer services and facilities are all adjacent to or with close proximity to the proposed EEO zoning district, other public services that may be of benefit to the types of land uses allowed under the proposed EEO zoning district (such as law enforcement, mail, planning and zoning and solid waste disposal) are also available within the proposed EEO zoning district and other public facilities and services such as schools, parks, libraries and aging services are available within the EEO zoning district but are typically not required by the type of land uses permitted within the proposed zoning district.

**iii. In evaluating the proposed zoning regulations, consideration shall be given to:**

**a. The reasonable provision of adequate light and air;**

The reasonable provision of adequate light and air is typically achieved through bulk and dimensional requirements included in zoning districts. Restrictions on proximity of structures to property lines (setbacks), building height and fence height serve to prevent structures from blocking light or the circulation of air to adjoining lands. The proposed EEO zoning district will overlay existing B-2 and B-3 zoning and the text of the proposed zoning district includes language (proposed Section 3.50.030) that makes clear that the bulk and dimensional requirements of the underlying zoning remain in effect.

**Finding #6:** The proposed EEO zoning district will reasonably provide for adequate light and air because the district will overlay existing B-2 and B-3 zones that already include bulk and dimensional requirements (such as building height restrictions and setbacks from property lines) that protect access to light and circulation of air and Section 3.50.030 of the text of the proposed EEO zoning district clearly states that the bulk and dimensional requirements of the underlying zoning remain in effect.

**b. The effect on motorized and non-motorized transportation systems;**

The proposed EEO zoning district is a relatively small overall area of Evergreen located along the commercial corridor. The Evergreen commercial corridor is referred to as a corridor because it follows and is accessed by U.S. Highway 2 or Montana Highway 35. The EEA addendum to the KCCMP of which the proposed EEO zoning district is a direct implementation outlines existing characteristics and projected trends for the highways that make up the Evergreen commercial corridor. The Montana Department of Transportation monitors and maintains the highways in this area and schedules safety improvement projects and reviews approach permits. Changes of land use that may occur when the proposed EEO zoning district is applied to the zoning map would require review to ensure adequate and safe access to the highway. Similarly, some properties within the proposed EEO zoning district that are near major highway intersections with county roads that do not directly access the highway but access the county road will require review by Flathead County when a change of land use occurs. Traffic patterns, physical highway infrastructure and land uses for properties within the proposed EEO zoning district that access the highway are well-monitored by a state agency. Properties that access a county road are not as closely monitored but still require approach permit review by the county for changes of land use. Therefore, the effects on motorized transportation systems of diversifying the allowable land uses within the boundary of the proposed EEO zoning district would be adequately mitigated.

Non-motorized transportation systems within the proposed EEO zoning district are limited to a bicycle path on East Evergreen Drive and sporadic sections of sidewalk adjacent to highways. The approach permit review



process will ensure that changes in land use that may impact these existing facilities are required to adequately mitigate by redesigning or relocating the facility.

**Finding #7:** The effect of the proposed EEO zoning district on motorized and non-motorized transportation systems will be adequately mitigated because changes in land use that occur as a result of the new allowable land uses in the district will be reviewed by the Montana Department of Transportation or Flathead County for appropriately designed and constructed highway or county road access and potential negative impacts to bicycle paths or sidewalks will require mitigation.

**c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

The proposed EEO zoning district will create a zoning overlay district along the Evergreen commercial corridor in areas currently zoned B-2 or B-3. The nearest municipality to Evergreen is Kalispell, Montana. The current *Kalispell Growth Policy* was adopted by the Kalispell City Council on February 18, 2003. Figure 1 of the *Kalispell Growth Policy* shows the “Growth Policy Area” and includes all the area covered by the proposed EEO zoning district. Although the Evergreen area is included in the “Growth Policy Area” of the *Kalispell Growth Policy*, the plan only directly refers to Evergreen in regards to the interlocal agreement with the Evergreen Water and Sewer District. Evergreen is not within Kalispell city limits and annexation of Evergreen has been a touchy subject for many years and is highly unlikely. The Evergreen area is not listed as a “Target Development Area”<sup>2</sup> or otherwise discussed much in the *Kalispell Growth Policy*.

However, many goals and policies of the *Kalispell Growth Policy* address land use planning for business and industry and many of these goals and policies are related to mixing land uses and utilizing existing services and infrastructure and this is compatible with the purpose of the proposed EEO zoning district. Part 4 of the *Kalispell Growth Policy* provides land use planning guidance for business and industry land uses. “Viable mix(es)” of land uses for business and industry are encouraged, and ten goals are set forth in Part 4 (page 14) specifically related to business and industry. The proposed EEO zoning district implements many of the ten goals, including those that address the utilization of existing services and infrastructure, providing adequate area for expansion of commercial and industrial land uses, avoiding encroachment of incompatible land uses into residential areas and better understanding the needs of commercial and industrial land uses.

The *Kalispell Growth Policy* also contains a “Future Land Use Map” at the back of the document. The area covered by the proposed EEO zoning district

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<sup>2</sup> Kalispell Growth Policy, Policy #6, page 18.

is shown on that map as either “Commercial” adjacent to the highway or “Urban Mixed Use” just behind the “Commercial” designation. The “Urban Mixed Use” future land use classification is described in Policy #7 on page 18 of the *Kalispell Growth Policy* and contains six policy statements encouraging the development of centrally located service and employment areas, expanding “urban highway commercial areas” as “mixed use corridors,” and “Allow(ing) a compatible mix of higher-intensity uses including office as well as some commercial and **light industrial**” (emphasis added). While the proposed EEO zoning district does not specifically include a method to “create a gradual transition” (Part 4, Policy 7.d, page 19) of higher intensity land uses into residential neighborhoods, the majority of goals, policies and policy statements in the *Kalispell Growth Policy* are remarkably similar to and compatible with the purpose of the proposed EEO zoning district.

**Finding #8:** The proposed EEO zoning district is compatible with the *Kalispell Growth Policy* because the district encourages the mixing of land uses and infill development in an area of existing public services, infrastructure and commercial development, the proposed EEO zoning district accommodates and encourages the diversification of land uses to include light industrial land uses in a manner that is prevented from intruding on adjacent residential land uses, and the proposed EEO zoning district applies to a rural area of the county that Kalispell designates as “Commercial” and “Urban Mixed Use” future land use.

**d. The character of the district(s) and its peculiar suitability for particular uses;**

The area in which the EEO zoning district is proposed is limited to those areas already zoned B-2 and B-3 in the Evergreen commercial corridor. The Evergreen commercial corridor is presently an “auto-urban” environment predominantly characterized by direct access highway frontage, large areas of ample parking, existing signage and existing commercial structures historically filled with retail sales and service-oriented businesses. The Evergreen commercial corridor is in close proximity to a large residential base of potential employees as well as customers. A large volume of automobile traffic contributes to the “auto-urban” character of the area and also assures high visibility and accessibility for businesses in the corridor. The majority of the Evergreen commercial corridor where the EEO zoning district is proposed has all necessary public services and infrastructure to support both the existing commercial land uses under the current B-2 and B-3 zoning as well as the additional land uses that are listed in Section 3.50.020 of the proposed EEO zoning district. The new permitted land uses in the proposed EEO zoning district include light assembly and manufacturing, fabrication and processing, repairing, packing, storage facilities etc. The text of the EEO zoning district includes language to prevent objectionable impacts that would extend beyond lots lines. Therefore the character of the Evergreen commercial corridor where

the EEO zoning district is proposed is well suited to and will benefit from the additional permitted land uses and impact mitigating requirements of the district.

**Finding #9:** The proposed EEO zoning district creates a district that will overlay and diversify permitted land uses and encourage infill development in existing B-2 General Business and B-3 Community Business zoning districts in the Evergreen commercial corridor and is ideally suited for the character of the Evergreen commercial corridor because the areas to which the overlay could be applied are already served by public services and infrastructure and are already predominantly “auto-urban” in character with direct access highway frontage, large areas of ample parking, existing signage and existing commercial structures.

**e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The proposed EEO zoning district is specifically located to encourage infill and the repurposing of existing commercial property and structures that may otherwise sit vacant or underutilized when some retailers move from Evergreen to other areas of Flathead County. Repurposing commercial land and structures from primarily retail sales and service land uses to the additional land uses found in the EEO zoning district will help to preserve the value of the land and buildings. Structures may be marketed to a broader range of potential tenants conducting light assembly, manufacturing, fabrication and processing, repairing, packing, storage facilities, warehousing and distribution of products and equipment. These tenants will find value in large, highly visible and highly accessible structures that have ample parking, are centrally located in the Flathead Valley and are relatively affordable compared to new construction.

In addition to preserving the value of buildings in the Evergreen commercial corridor, the proposed EEO zoning district will increase allowable commercial land uses in an area already served by public services and infrastructure. Businesses looking to locate in the Flathead Valley will have new, efficient and affordable options for locating light assembly and manufacturing jobs in a zoning-compliant manner. This will encourage the most appropriate use of land in the Flathead Valley.

**Finding #10:** The proposed EEO zoning district encourages the most appropriate use of land throughout the rural jurisdiction of Flathead County and enhances the value of buildings by creating a zoning overlay in the Evergreen commercial corridor to diversify current permitted land uses and encourage infill and redevelopment in an area already served by public services and infrastructure and the additional options for utilization of

buildings and land will create value for landowners and potential tenants of existing commercial structures.

**iv. Whether the proposed zoning regulations are, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

The proposed EEO zoning district may only be used as an overlay along the Evergreen commercial corridor. The proposed EEO zoning district adds permitted uses to include some land uses that are typically associated with “light industrial” land use categories, but does so in a manner that prevents objectionable impacts that may extend beyond lot lines.

A review of the zoning ordinance of the City of Kalispell shows that many of the land uses that the proposed EEO zoning district adds to the B-2 and B-3 zoning districts in the Evergreen commercial corridor are already permitted uses in Kalispell’s B-2 zoning district. For example, the EEO zoning district adds “Light Assembly” to county B-2 zoning in Evergreen and the same use is listed as permitted in Kalispell’s current B-2 zoning district.<sup>3</sup> Other examples of land uses permitted in the proposed EEO zoning district that are already listed as permitted in Kalispell’s B-2 zoning district include automobile, bus, truck, boat and equipment repair, repair shops and processing and manufacturing of alcoholic beverages (microbreweries) or baked goods (bakeries). The proposed county EEO zoning district also adds uses to the county’s B-3 “Community Business” zoning district in the Evergreen commercial corridor. Although the City of Kalispell does not have a corresponding B-3 “Community Business” zoning district, the limited areas along the Evergreen commercial corridor where the county B-3 zoning district is used (including K-Mart, Conlin’s Furniture store and the area around Charlie Wong’s Restaurant) are very similar in character and existing land use to the City of Kalispell’s B-2 zoning district. The land uses added to the county’s B-2 and B-3 zoning districts by the proposed EEO zoning district therefore appear to provide an opportunity for mixture of uses in the Evergreen commercial corridor that is compatible with the zoning ordinances of the City of Kalispell.

**Finding #11:** The proposed amendment to the text of the *Flathead County Zoning Regulations* to add the Evergreen Enterprise Overlay zoning district makes Flathead County’s B-2 and B-3 zoning districts in Evergreen (where the EEO zoning district may be utilized) more compatible with the City of Kalispell’s B-2 zoning district because it adds permitted land uses in the Evergreen commercial corridor that are similar to uses listed in the City of Kalispell’s B-2 zoning district such as light assembly and processing and manufacturing of food and automobile, bus, truck and boat repair and the City of Kalispell does not have a corresponding B-3 zoning district.

## **V. SUMMARY OF FINDINGS**

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<sup>3</sup> Section 27.13.020(2) Kalispell Zoning Regulations

**Finding #1:** The proposed Evergreen Enterprise Overlay zoning district is made in accordance with the *Flathead County Growth Policy* because it is a direct implementation of three of the four policies contained in the *2016 Evergreen Enterprise Area* document that has been reviewed and adopted as an addendum to the *Kalispell City County Master Plan Year 2010* and the *Kalispell City County Master Plan Year 2010* is an addendum to the *Flathead County Growth Policy*.

**Finding #2:** The proposed Evergreen Enterprise Overlay zoning district is made in accordance with the “Property Owner’s Bill of Rights” in the Flathead County Growth Policy because it meets all of the six requirements set forth in the Preface for any regulations that apply to the use of private property that use the Growth Policy as a basis.

**Finding #3:** The proposed EEO zoning district is designed to help secure safety from fire and other dangers because it will encourage infill and redevelopment in an area of Flathead County that is fully served by existing public safety services and infrastructure, it exists in an area of the county routinely patrolled by the Flathead County Sheriff’s Office, contains portions of the 100-year floodplain that are subject to floodplain regulations that exist to prevent and mitigate danger to the community from flood risk, and the EEO zoning district will help to reduce the potential for vacant and underutilized commercial structures that can create dangers in a community.

**Finding #4:** The EEO zoning district is specifically designed to improve public safety and the general welfare of the community by helping to prevent vacant and dilapidated commercial structures, diversifying permitted land uses and encouraging infill development and by filling formerly retail sales and service oriented buildings with other land uses that pay taxes and maintain jobs in the community.

**Finding #5:** The proposed EEO zoning district will facilitate the adequate provision of many public requirements because developed transportation services and facilities and public water and sewer services and facilities are all adjacent to or with close proximity to the proposed EEO zoning district, other public services that may be of benefit to the types of land uses allowed under the proposed EEO zoning district (such as law enforcement, mail, planning and zoning and solid waste disposal) are also available within the proposed EEO zoning district and other public facilities and services such as schools, parks, libraries and aging services are available within the EEO zoning district but are typically not required by the type of land uses permitted within the proposed zoning district.

**Finding #6:** The proposed EEO zoning district will reasonably provide for adequate light and air because the district will overlay existing B-2 and B-3 zones that already include bulk and dimensional requirements (such as building height restrictions and setbacks from property lines) that protect access to light and circulation of air and Section 3.50.030 of the text of the proposed EEO zoning district clearly states that the bulk and dimensional requirements of the underlying zoning remain in effect.

**Finding #7:** The effect of the proposed EEO zoning district on motorized and non-motorized transportation systems will be adequately mitigated because changes in land use that occur as a result of the new allowable land uses in the district will be reviewed by the Montana Department of Transportation or Flathead County for appropriately designed and constructed highway or county road access and potential negative impacts to bicycle paths or sidewalks will require mitigation.

**Finding #8:** The proposed EEO zoning district is compatible with the *Kalispell Growth Policy* because the district encourages the mixing of land uses and infill development in an area of existing public services, infrastructure and commercial development, the proposed EEO zoning district accommodates and encourages the diversification of land uses to include light industrial land uses in a manner that is prevented from intruding on adjacent residential land uses, and the proposed EEO zoning district applies to a rural area of the county that Kalispell designates as “Commercial” and “Urban Mixed Use” future land use.

**Finding #9:** The proposed EEO zoning district creates a district that will overlay and diversify permitted land uses and encourage infill development in existing B-2 General Business and B-3 Community Business zoning districts in the Evergreen commercial corridor and is ideally suited for the character of the Evergreen commercial corridor because the areas to which the overlay could be applied are already served by public services and infrastructure and are already predominantly “auto-urban” in character with direct access highway frontage, large areas of ample parking, existing signage and existing commercial structures.

**Finding #10:** The proposed EEO zoning district encourages the most appropriate use of land throughout the rural jurisdiction of Flathead County and enhances the value of buildings by creating a zoning overlay in the Evergreen commercial corridor to diversify current permitted land uses and encourage infill and redevelopment in an area already served by public services and infrastructure and the additional options for utilization of buildings and land will create value for landowners and potential tenants of existing commercial structures.

**Finding #11:** The proposed amendment to the text of the *Flathead County Zoning Regulations* to add the Evergreen Enterprise Overlay zoning district makes Flathead County’s B-2 and B-3 zoning districts in Evergreen (where the EEO zoning district may be utilized) more compatible with the City of Kalispell’s B-2 zoning district because it adds permitted land uses in the Evergreen commercial corridor that are similar to uses listed in the City of Kalispell’s B-2 zoning district such as light assembly and processing and manufacturing of food and automobile, bus, truck and boat repair and the City of Kalispell does not have a corresponding B-3 zoning district.

## **VI. CONCLUSION**

Per Section 2.08.060 of the Flathead County Zoning Regulations, a review and evaluation by the staff of the Planning Board comparing the proposed zoning district to the criteria for evaluation of zoning districts found in 76-2-203 M.C.A. has found the proposal to

generally comply with the review criteria, based upon the draft Findings of Fact presented above.

Planner: BJ